IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8133 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIPURA KADAVA PATIDAR SARVAJANIK MANDAL

Versus

ADDITIONAL CHIEF SECRETARY & OTHERS

Appearance:

MR PJ VYAS for Petitioner

MS.BR GAJJAR ASSISTANT GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 19/04/2000

ORAL JUDGEMENT

I have heard Mr. P.J.Vyas, learned counsel appearing for the petitioner and Ms. Gajjar, learned Assistant Government Pleader appearing on behalf of the

State Respondent. The petitioner is an Educational Institution and they are running the educational institute in the land in dispute. It is submitted by Mr. Vyas, learned counsel for the petitioner that the institute purchased the land by a registered sale deed dt. 21st February, 1980. The land was originally used as an agricultural land and before purchase of the land, the institute did not obtain any permission as required under Section 63 of the Tenancy Act. However subsequently, the Institute applied for permission and the Deputy Collector gave the permission by his order dated 28th June, 1988 validating the transfer of the land purchased by the petitioner. Thereafter on 10th May, 1989, the petitioner institution submitted an application for conversion of the agricultural land in non-agricultural purpose i.e. for the purpose of extension of the Institution. It is submitted by the learned counsel for the petitioner that because of increase in number of the students and because of the fact of upgrading the school, the land was necessary and the Government has also permitted the Institution to open the higher classes. Accordingly, in the purchased land, after obtaining the necessary permission for non-agricultural use, the Institute has constructed a building in the land and higher class has also been opened some time in 1989-90. Thereafter the Additional Chief Secretary, -respondent no.1 issued a notice to the petitioner Institution on 2nd December, 1989 to show cause why the entries made in the record of right shall not be cancelled as the land has been purchased by the petitioner without obtaining necessary permission. After hearing the parties, Additional Chief Secretary passed an order dated 30th August, 1990 quashing the permission granted to the Institution for non-agricultural use of the land, and accordingly, he quashed the N.A. permission granted by the respondent no.2 -District Development Officer, Jilla Panchayat, Banaskantha at Palanpur. Having felt aggrieved by the order of the Additional Chief Secretary dt. 30th August, 1990, the petitioner has filed the present writ petition for quashing the order of the Additional Chief Secretary dated 30th August, 1980 Annexure: E. Learned counsel for the petitioner submitted that though initially permission was not taken for purchase of the land, the Deputy Collector by his order dated 28th June, 1988 granted the permission expost-facto thereby validating the transfer of the land purchased by the petitioner. Learned counsel also submitted that in pursuance of the interim order passed by this court, constructions have been made in the land, higher classes have been opened and any interference with the land at this stage will

create serious problems to the institution and the students will be the ultimate sufferers in the process. Learned counsel, therefore, submitted that the Additional Chief Secretary should not have cancelled the N.A. permission in view of the fact that there is no illegality committed by the District Development Officer, Jilla Panchayat, Banaskantha at Palanpur in granting the N.A. permission. Learned counsel consequently submitted that since the order of the learned Additional Chief Secretary has affected and will have effect of undoing things which has been settled for a quite long time, the order should be quashed.

Ms. Gajjar, learned AGP submitted that the Deputy District Development Officer should not have granted the permission for transfer of the land expost-facto. It is also submitted that Section 63 of the Tenancy Act do not contemplate a permission with retrospective effect. It is also submitted that since the petitioner as an Institute, has not purchased the land after obtaining the necessary permission, entire transaction is invalid, and therefore, the Institute cannot acquire any right by purchase of the land. Learned Assistant Government Pleader also submitted that the land in question is an agricultural land. The petitioner Institute had purchased the land, which is admittedly, is not an agriculturist, and therefore, the Institution has no right to purchase the land, and therefore, entire transaction is invalid.

I do not accept the submissions of Ms. Gajjar, learned Assistant Government Pleader in view of the fact that Section 63 of the Tenancy Act provides that the land can be transferred after fulfilling certain conditions, i.e. certain land can be transferred after obtaining permission for the competent authority. Law further prescribes that if any transfer is made without obtaining necessary permission, then the transfer will be invalid. The Tenancy Act do not say that the transfer will be void if permission is not obtained. Obviously, there is a distinction between void transfer and invalid transfer. In the instant case, the land can be transferred with the permission of the competent authority. Initially the permission was not obtained but subsequently, the permission was obtained and the competent authority issued the permission with retrospective effect i.e. he has sanctioned or permitted expost-facto and when such permission is obtained subsequently, the invalid transfer will become valid one. As regards second submission of Ms. Gajjar, learned AGP, I agree with the submission made by her that agricultural land can be permitted to be

used for non-agricultural purpose with the permission of the competent authority. The District Development Officer of the District Panchayat has been authorised by law to permit the use of agricultural land for non-agricultural purpose. In the instant case, the petitioner Institute applied for non-agricultural use of the land and that permission has been granted by the authority by order dt. 10th May, 1989. Since the permission has been granted by the competent authority, I do not find any illegality committed in granting special N.A. permission to the petitioner Institute. The learned Additional Chief Secretary, while quashing the N.A. permission stated in his order that at the time of purchase of the land on 21/2/1980, the Institute did not obtain permission from the competent authority, and therefore, the N.A. permission issued by the authority is liable to be quashed. In my opinion, the learned Additional Chief Secretary should not have quashed the N.A. permission in view of the fact that subsequently the permission has been granted to the Institute and by such permission, the invalid transfer has been validated. Therefore, there is no illegality on the part of the respondent no.2 in granting the N.A. permission to the petitioner Institute.

Having regard to the position explained above, I am of the view that the learned Additional Chief Secretary committed an error in setting aside the N.A. permission issued by the respondent no.2 on 10th May, 1989. Consequently, the order of the learned Additional Chief Secretary dt. 30th August, 1990 at Annexure : E to the petition is liable to be quashed and accordingly the said order is quashed. While passing this order, another aspect has also been examined by me. The petitioner Institute is running an Educational Institution in the disputed land by constructing school building. Any interference or undoing the transfer will have a serious repercussion on the education of the students who are studying there. Since the Institution is running the school in the disputed land, I am of the view that at this stage, it will not be in the interest of the students to uphold the decision of the learned Additional Chief Secretary. Having regard the facts and circumstances stated above and after hearing learned counsel of both the parties, I am of the view that the writ petition should be allowed. According, it is allowed. Rule is made absolute accordingly. The order of the learned Additional Chief Secretary dated 30th August, 1990 Annexure : E is quashed. I make no order as to costs.

Date:19/4/2000. (P.K.SARKAR, J.)
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